IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Government Appeal No. 1127 of 2001

(Old No. 1353 of 1992)

State

…….Appellant

Versus

Rashid S/o Yasin,
R/o Gandhi Gram, outpost Laxman Chowk,
Police Station Kotwali, District Dehradun.

……..Accused-Respondent.

Sri Amit Bhatt, learned A.G.A. for the appellant State
Sri K.S. Verma, learned counsel for the respondent.

Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

[Prafulla C. Pant, J. (oral)]

This is an appeal, preferred under Section 378(3) of Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 21.4.1992 passed by learned Sessions Judge, Dehradun in Sessions Trial No. 122 of 1987, whereby accused respondent Rashid has been acquitted of charge of offences punishable under Sections 302/34 of Indian Penal Code, 1860 (hereinafter referred as I.P.C.).

(2) Heard learned counsel for the parties.

(3) The prosecution story in brief is that P.W. 1, Om Prakash, informant is a resident of Gandhi Gram, Police Station Kotwali, Dehradun. He lodged a report (Ext. A-1) with the said Police Station at 11:15 p.m. on 2.8.1987. In the said report it is alleged that accused Rashid and Tasleem, residents of Gandhi Gram used to tease girls. They were objected several times and asked not to do so. On this, both the accused has altercations with Mukesh (deceased) brother of Om Prakash. On 2.8.1987 at about 8.00 p.m., when P.W. 1 Om Prakash and his brother Mukesh (deceased) were coming back to their house after witnessing a cycle show, accused Tasleem and Rashid stopped them in front of their house. P.W. 2 Dasrath was also with deceased and witness Om Prakash. According to prosecution story, the accused hurling abuses at the deceased, asked him “SALE TU BARA MOHALLE KI LARKIYON KA SUDHARAK BANTA HAI”. Mukesh asked the accused not to hurl abuses at him. On this, accused Tasleem armed with axe and Rashid (present respondent), armed with KHUKRI with the intention to kill Mukesh attacked him and caused injuries on his head and neck. On receiving injuries, Mukesh fell down on the ground. The aforesaid witnesses raised alarm. However, the accused were successful in fleeing from the place of incident. On this injured was taken immediately in three-wheeler to Doon Hospital, where he was admitted. His injuries were examined by the Dr. D.S. Negi (P.W. 3) attending him, but the injured succumbed to injuries at 10.10 p.m. on the very

day. On the basis of the report (Ext. A-1), which was lodged by P.W. 1 Om Prakash with the Police Station, Kotwali, a Crime No. 476 of 1987 was registered against both the accused Tasleem and Rashid and a check report (Ext. A-12) was prepared. On the next day i.e. on 3.8.1987 at 9.40 p.m. a police team headed by Sub Inspector, P.S. Rotela (P.W. 4), took the dead body of Mukesh in their possession and prepared inquest report (Ext. A-4), sketch of dead body (Ext. A-5), police form no. 13 (Ext. A-6) and letter (Ext. A-7) requesting for postmortem examination. P.W. 5, constable Udaiveer Singh took the dead body in the sealed condition along with constable Rama Shankar. P.W. 6 Dr. S.P. Tewari conducted postmortem examination on 3.8.1987 at 3.35 p.m. and prepared autopsy report (Ext. A-11). P.W. 8 Albel Singh, Inspector of Police Station Kotwali investigated the crime. After inspecting the place, he prepared site plan (Ext.A-16). He collected the blood stained soil and sample soil and prepared memo (Ext. A-17). After interrogation of the witnesses and on completion of the investigation charge sheet (Ext. A-19) was filed by the Investigating Officer before the Magistrate for trial of the two accused Tasleem and Rashid for the murder of Mukesh allegedly committed by them.

(4) The Magistrate on receipt of the charge sheet appears to have committed the case to the Court of Sessions for trial, after giving necessary copies to the accused as required under Section 207 of Cr.P.C.. The learned Sessions Judge after hearing the prosecution and the defence, on 2.11.1987 framed

charge of offences punishable under Section 302 of I.P.C. read with Section 34 of I.P.C. against both the accused Tasleem and Rashid, who pleaded not guilty and claimed to be tried. It appears that during the trial accused Tasleem did not appear and his case was separated from the present accused Rashid. The prosecution got examined P.W. 1 Om Prakash, informant, eye witness and brother of the deceased, P.W. 2 Dasrath, another eye witness, P.W. 3 Dr. D.S. Negi, who recorded injuries on the person of injured Mukesh when he was admitted in Doon Hospital at 8.55 p.m. on 2.8.1987., P.W. 4 P.S. Rotela, who prepared the inquest report, P.W. 5 Constable Udaiveer Sigh, who took the dead body for postmortem examination, P.W. 6 Dr. S.P. Tweari, who conducted the postmortem examination, P.W. 7 Head Constable M.S. Bisht, who prepared the check report (Ext.A-12) of the first information report and made entries in the general diary, and P.W. 8 Albel Singh, the Investigating Officer. The oral and documentary evidence was put to the accused under Section 313 of Cr.P.C. in reply to which accused Rashid alleged the same to be false. He pleaded that he was falsely implicated. In defence D.W. 1 P.N. Bahukhandi, who is a Draftsman of M.D.D.A. and who prepared the map (Ext. B-1) showing that there is no electric pole with light between the place of cycle show and the house of the accused was examined. After hearing the parties, the trial court found that the charge of offences punishable under Sections 302/34 is not proved beyond reasonable doubt against the accused respondent (present respondent) and acquitted him of said charge. Aggrieved by

said judgment and order dated 21.4.1992, this appeal was preferred before Allahabad High Court from where it has been received by transfer under Section 35 of U.P. Reorganization Act 2000 for its disposal.

(5) Before further discussions, it is pertinent to mention here the injuries found on the person of Mukesh (deceased) at the time of his admission in injured condition in Doon Hospital on 2.8.1987. In the medical report (Ext. A-2), prepared by Dr. D.S. Negi (P.W. 3), following injuries were recorded on the person of the injured at the time of his admission in the Hospital:-.

(i) ***Incised wound 12 cms. x 3 cms. x bone deep on right side of forehead on temporal regionextending upto right ear and mestoid region which is cut in middle through and through, bleeding.***

(ii) ***Incised wound 5 cms. x 3 cms. x skin deep on the left side of neck, 4.5 cm below ear.***

These injuries were observed at 8.55 p.m. on 2.8.1987.

(6) From the record, it appears that after the injured was admitted, he succumbed to the injuries received by him. Next day i.e. 3.8.1987, P.W. 6 Dr. S.P. Tewari conducted autopsy on the dead body and recorded the ante mortem injuries as under:-

"(i) Stitched wound left side of neck extending from the angle of left jaw upto outer angel of left clavicle, size 15

cms. x 3 cms. depth upto 4th cervical vertebrate. Vessels underneath were cut. Body of the vertebrae cut upto canal of the vertebrae.

(ii) Stitched wound right side of neck extending from forehead just above the outer angle of the eye brow to back and behind the right ear cutting the right ear in the middle size 9 cms. x 3 cms.. On removing stitches right jaw was found cut underneath the wound with one tooth lost. Temporal bone was partly cut under the right ear."

According to the Medical Officer, who conducted the postmortem examination on the dead body, death was caused due to shock and hemorrhage as a result of ante mortem injuries.

(7) In view of the above ante mortem injuries, recorded at the time of postmortem examination, it is established on record that deceased Mukesh has died homicidal death on 2.8.1987. The question now is who committed the murder. According to the prosecution accused Rashid and his associate Tasleem committed the crime. To prove this fact prosecution relied upon the statement of the witness P.W. 1, Om Prakash, brother of the deceased and P.W. 2, Dasrath, who is said to have been accompanying Om Prakash and Mukesh at the time of the incident. P.W. 1 Om Prakash and P.W. 2 Dasrath have supported the prosecution story and stated that when they were coming with Mukesh from cycle show accused Tasleem armed with axe and accused Rashid

armed with KHUKRI attacked Mukesh and caused injuries on his person.

(8) However, the trial court did not find the testimony of the two eyewitness mentioned above believable beyond reasonable doubt for the following reasons:-

(I) The trial court is of the view that the place of incident alleged by prosecution is doubtful.

(II) Presence of P.W. 1, Om Prakash, brother of the deceased is also doubtful as there was no blood stains in his cloths while he has stated that when injured was bleeding he took him on his lap in a three wheeler to the Hospital.

(III) The trial court also found presence of P.W. 2, Dasrath as doubtful for the reason that according to this witness he along with Om Prakash took the injured to the Hospital, but in the medical examination report (Ext. A-2) P.W. 3, Dr. D.S. Negi has shown one Mathu has brought the injured to the Hospital. It has come on the record that Mathu is brother of Om Prakash.

(IV) The trial court found the story narrated by the two witneses Om Prakash and Dasrath that they saw the incident as doubtful on the ground that no source of light has been mentioned in the First Information Report. However, during examination the two witnesses have stated that they saw the incident in electric light.

(9) Apart from the above four points, mentioned by the trial court, there are other circumstances also which remained to be explained by the prosecution as to the truthfulness of the two witnesses namely, Om Prakash and Dasrath. The two witnesses have stated that hundreds of people were watching the cycle show. When, at the time of close of the cycle show, people come out of such show no one would be all alone. When the crowd or number of persons coming out of the show, it is more doubtful that the accused have chosen the time to commit murder of the injured as they could have been over powered by the witnesses. Apart from this, it is also not natural that a person with axe would be standing on the road and would wait for the deceased as he can be seen by anyone armed with such a deadly weapon on the road.

(10) Having heard learned counsel for the parties and perusal of the evidence on record, we are of the view that the witnesses P.W. 1 Om Prakash and P.W. 2 Dasrath might have stated the truth, but in the above circumstances there appears to be reasonable doubt in the manner the crime is said to have been committed by the accused. It is settled principle of law that where there are two views possible on the basis of the evidence on record, it is not proper to reverse the findings of the trial court, which has held that the charge did not stand proved beyond reasonable doubt.

(11) In view of the above discussions, we do not see sufficient reasons to reverse the order of acquittal recorded

by the trial court in favour of the respondent Rashid holding that the charge as against him is not found to have been proved beyond reasonable doubt. Accordingly, the appeal is liable to be dismissed. The same is dismissed.

(Dharam Veer, J.) **(Prafulla C. Pant, J.)**

3.4.2007
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